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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
(HONORABLE ROSANNA MALOUF PETERSON)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 2:22-CR-138-RMP-2
)	
vs.)	DEFENDANT’S SENTENCING
)	MEMORANDUM & REQUEST
FREDERICK TERRELL,)	FOR DOWNWARD VARIANCE
)	
Defendant.)	
)	

FREDERICK TERRELL, through counsel, Stephen R. Hormel for Hormel Law Office, L.L.C., submits the following Sentencing Memorandum and Request for Downward Variance:

A. **Introduction.**

When addressing a sentencing court’s function in fashioning the appropriate sentence, the Ninth Circuit, long ago, wrote:

[i]n making a decision in any particular case, good judgment will often require the evaluation of a complex set of factors. No single factor may be enough to point to the wise course of decision. But a wise person will not look on each particular factor abstractly and alone. Rather, it will be how the particular pieces fit together, converge, and influence each other that will lead to the correct decision.

1 *United States v. Cook*, 938 F.2d 149, 153 (9th Cir. 1991).

2 *Cook* centered on a sentencing court's ability to grant downward departures
3 based on a "combination of factors" that constitute a single "mitigating factor." *Id.*
4 The sentencing landscape has changed since *Cook* with the Supreme Court's
5 holding in *United States v. Booker*, 543 U.S. 220 (2005). *Booker* eliminated a rigid
6 approach in formulating the appropriate sentence to be imposed in any given case.

7 Now a combination of factors may more reasonably justify downward
8 variances from the sentencing guidelines. *See, Gall v. United States*, 552 U.S. 38,
9 47 (2007) ("We also reject the use of a rigid mathematical formula that uses the
10 percentage of a departure as the standard for determining the strength of the
11 justifications required for a specific sentence."). In other words, "the totality of
12 circumstances" are considered in determining the "substantive reasonableness" of a
13 particular sentence imposed outside of the sentencing guideline range. *United*
14 *States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (citing *Gall*, __U.S.__, 128 S.Ct.
15 586, 597 (2007). A sentence outside the guideline range is not presumed
16 unreasonable. *Id.*; *see also, Nelson v. United States*, 555 U.S. 350, 352 (2009)
17 ("The Guidelines are not only *not mandatory* on sentencing courts; they are also
18 not to be *presumed* reasonable.") (emphasis in original).

19 Sentencing courts need not determine whether grounds that justify a variance
20 from a particular guideline range fit neatly within a specific provision of the
21 Guidelines when using such provision to impose a variance. *United States v.*
22 *Tankersley*, 537 F.3d 1100, 1114 (9th Cir. 2008) (no "need to consider whether the
23 district court correctly applied the departure provision ..., rather ... [a] district
24

1 court's deviation from the applicable guideline range [is reviewed] for
 2 reasonableness."'). The Supreme Court teaches:

3 It has been uniform and constant in the federal
 4 judicial tradition for the sentencing judge to consider
 5 every convicted person as an individual and every case as
 6 a unique study in the human failings that sometimes
 7 mitigate, sometimes magnify, the crime and the
 8 punishment to ensue.

9 *Pepper v. United States*, 476, 487 (2011) (quoting *Koon v. United States*, 518 U.S.
 10 81, 113 (1996)).

11 Here, a combination of factors justify a sentence below the guideline
 12 sentencing range of 51 to 63 months in prison. (ECF No. 37 at 24, ¶ 191). The
 13 mitigating circumstances include the nature of the offense conduct, medical
 14 condition/post-offense rehabilitation efforts and extensive family support.¹

15 **B. Guideline Calculation.**

16 The parties do not dispute the guideline range calculation in the Presentence
 17 Investigation Report of 51 to 63 months imprisonment. *Id.*

18 **C. Downward and Variance**

19 1. Possession for lawful sporting purposes.

20 Before his arrest, Mr. Terrell worked at Quick Lube in Spokane. (ECF No.
 21 37 at 23, ¶ 180). On April 8, 2022, Mr. Terrell went to an indoor shooting range
 22 with a fellow-employee. The fellow employee video recorded Mr. Terrell as he

23 ¹ A flash drive will be provided to the Court and to the Government as a
 24 non-scannable exhibit. The flash drive will contain short video presentations from
 25 Mr. Terrell's family members.

1 shot off several rounds from a Glock Model 20 10mm pistol. The pistol belonged
2 to the employee. Mr. Terrell forwarded three of the videos to his then girlfriend,
3 who reported Mr. Terrell's firearm possession to his Washington State Department
4 of Corrections (DOC) officer. Mr. Terrell was on DOC supervision at the time of
5 his possession. (ECF No. 37 at 4-5, ¶¶ 9-13).

6 While Mr. Terrell was at the shooting range, he placed another pistol on
7 layaway. However, Mr. Terrell contacted the shooting range and cancelled the
8 sale, informing them that "he was on probation and could not own it." (ECF No.
9 37 at 4-5, ¶ 11).

10 On April 15, 2022, Mr. Terrell was interviewed by an officer with the
11 Spokane Police Department. He freely admitted to shooting the Glock pistol at the
12 shooting range. He admitted that his activities were recorded and he had sent
13 videos of his activities to his former girlfriend. He wanted "to show her he was
14 having fun and blowing off steam." Mr. Terrell admitted "he 'messed up' by going
15 to Sharp Shooters." (ECF No. 37 at 5, ¶ 13).

16 Mr. Terrell was prohibited by federal law from possessing firearms due to his
17 previous felony convictions from California and Washington. (ECF No. 37 at 10, ¶
18 61, at 12, ¶ 87, at 14, ¶ 105).

19 The Guidelines provide for a lower offense level of 6 "[i]f the defendant ...
20 possessed ... firearms solely for lawful sporting purposes ... and did not unlawfully
21 discharge or otherwise use such firearms..." U.S.S.G. § 2K2.1(b)(2). This
22 provision, however, does not technically apply to Mr. Terrell under the Sentencing
23 Guidelines because his base offense level is 20 under U.S.S.G. 2K2.1(a)(5), based
24

1 on a prior conviction for a crime of violence. *Id.*; *see* (ECF No. 37 at 12, ¶ 87).
 2 While the offense level of 6 under § 2K2.1(b)(2) does not technically apply, the
 3 circumstances of the offense set out in that provision are applicable to Mr. Terrell’s
 4 offense conduct. *Tankersley*, 537 F.3d at 1114 (sentencing courts need not follow
 5 the technical application of a guideline provision to impose a variance).

6 Here, Mr. Terrell shot the pistol at a shooting range. He did not place any
 7 person in danger. The manner in which he discharged the firearm was lawful, but
 8 for his federal prohibition on possessing firearms. He showed the appropriate
 9 degree of restraint when he opted to cancel the purchase of another pistol before
 10 taking possession. When confronted by the police, Mr. Terrell freely admitted his
 11 wrongdoing and recognized he “messed up.” (ECF No. 37 at 5, § 13).

12 Under these circumstances, it is requested that the Court vary downward
 13 from the guideline range. Rather than follow the level 6 offense level in
 14 2K2.1(b)(2), it is suggested that the Court reduce the base offense level by 6 levels,
 15 to a level 14. Then taking into account a 2 level reduction for acceptance of
 16 responsibility, it is requested that the Court set the guideline range at 30 to 37
 17 months, resulting from a total offense level of 12, in a criminal history category of
 18 VI.

19 2. Serious Medical Condition and Post-Offense Treatment.

20 Mr. Terrell has been diagnosed with stage IV chronic kidney disease.²
 21

22
 23 ² Mr. Terrell’s medical records from the hospital and records from his
 24 treating physician will be filed under seal with permission from the Court due to

1 Medical Records, Under Seal at 2. In September 2022, his treating physician
2 indicated that Mr. Terrell may be in need of dialysis treatment, and suggested that
3 he make the effort to be placed on the list for a kidney transplant. *See*, Medical
4 Records, Under Seal at 6. Mr. Terrell’s follow up with his treating physician was
5 interrupted by his current incarceration. *Id.* at 21 (reminder call 11/1/2022, after
6 arrest on 10/29/2022).

7 Prior to seeing his treating physician in September 2022, Mr. Terrell was
8 hospitalized in August 2022, on a “Chief Complaint: Flank/Back Pain,” with
9 “Acute kidney injury...” *Id.* at 24. The hospital recommended a follow up with the
10 treating physician and suggested Mr. Terrell quit smoking. *Id.* at 25.

11 Mr. Terrell’s treating physician consulted with him “for hypertensive
12 emergency and acute kidney injury on advanced chronic kidney disease.” *Id.* at 33.
13 The doctor also “discussed with Mr. Terrell that he is very close to requiring
14 dialysis and will need close [follow up] fu.” *Id.* at 37.

15 Another medical service provider reported that Mr. Terrell has “a history of
16 _____
17 the sensitive nature of the records. The relevant portions of the medical records
18 are highlighted in yellow to allow the references to be located easier. The medical
19 records are cited as Medical Records, Under Seal, followed by a page number(s).
20 Also, to be filed under seal is a report from Spokane Regional Recovery Centers,
21 relating to treatment efforts made by Mr. Terrell before his arrest. The page
22 number for that report will follow sequentially after the medical records. Thus,
23 the medical records are pages 1-56 and the SPARC report are pages 57-61.
24

1 chronic kidney disease and hypertension he has been off his medication for quite
2 some time.” After his last discharge from the hospital, Mr. Terrell “was
3 incarcerated,” resulting in a lack of “adequate treatment.” *Id.* at 42.

4 Mr. Terrell had medical imaging performed. Imaging confirmed “medical
5 renal disease” and located a “structure within the right kidney most likely a cyst.”
6 *Id.* at 50.

7 The hospital records indicated that Mr. Terrell was previously admitted to
8 the hospital “for acute kidney injury” in April 2022. *Id.* at 38. His treating
9 physician “suspects the patient’s renal dysfunction may be progressive.” *Id.* at 27.

10 During the summer of 2022, Mr. Terrell entered an outpatient treatment
11 program at SPARC. SPARC Report, Under Seal at 57. Mr. Terrell was determined
12 to remain sober to qualify for placement on the kidney transplant list. *Id.* at 58
13 (“He feels he is in bad health and is eager to have some things resolved.”).

14 Mr. Terrell started outpatient treatment. SPARC Report at 57 (“Admission
15 6/17/2022”). However, that treatment did not prevent a relapse in August 2022.
16 *Id.* 58 (“he reported his last drink on August 29, 2022); and at 60 (“his first
17 experience was with our outpatient[, however,] Frederick relapsed while in
18 outpatient and was referred to inpatient.”). Mr. Terrell was admitted to SPARC
19 inpatient center on September 2, 2022. *Id.* at 57.

20 During treatment, Mr. Terrell disclosed some emotional/mental health issues
21 and “some significant trauma in his life and received no counseling for any of it.”
22 *Id.* at 59. He also attended “a weekly re-framing group,” designed to “teach
23 Frederick ways to manage negative thoughts that lead to negative emotions so that
24

1 he can react to situations rationally.” *Id.*

2 Mr. Terrell also met with the behavioral health counselor for an evaluation.
3 *Id.* SPARC listed his “Working Diagnosis (per DSM-V Criteria) as “Alcohol Use
4 Disorder, Severe; Bipolar I disorder, “Current of most recent episode manic;” and
5 PTSD. *Id.* at 57.

6 SPARC reported that “Frederick admits that his use of substances has had a
7 negative effect on most areas of his life causing damaged relationships, loss of
8 employment and recent homelessness.” *Id.* at 60. And, “[w]hile in treatment[,]
9 Frederick worked on increasing internal motivation to maintain sobriety[;] [h]e was
10 fully engaged in treatment and an active participant in all groups[;] Frederick was a
11 mentor to his peers and willing to help other people whenever he had the
12 opportunity[; and] [h]e will continue recommended SUD Outpatient treatment at
13 SPARC,” beginning on October 3, 2022. *Id.* at 69.

14 “While in treatment[,] Frederick worked on identifying triggers and
15 developed coping skills for triggers as they arise.” *Id.* at 60. Additionally,
16 “Frederick developed a recovery plan to address these triggers.” During treatment,
17 Mr. Terrell also attended daily AA meetings and “nightly in-house meetings of per
18 lead 12 step groups.” *Id.*

19 Mr. Terrell successfully completed the inpatient program and was discharged
20 on September 30, 2022. *Id.* at 57. He resided at a clean and sober home, the
21 Latawah Oxford House in Spokane and attended outpatient treatment, after his
22 discharge from the inpatient program. (ECF No. 8 at 2).

23 He was arrested and arraigned on October 20, 2022. (ECF No. 37 at 3, ¶ 2).
24

1 SPARC discharged him on October 26, 2022. SPARC Report at 57. In other
2 words, Mr. Terrell's arrest became a superseding intervening event that disrupted
3 what appears to be a sincere effort as post-offense rehabilitation.

4 There are two significant factors at play here. The first is Mr. Terrell's
5 serious medical issues as evidence by the medical reports submitted under seal.
6 The Guidelines recognize that sentencing courts may vary downward for "[a]n
7 extraordinary physical impairment." *See, United States v. Tosti*, 733 F.3d 816, 824
8 (9th Cir. 2013) (quoting U.S.S.G. § 5H1.4.). In cases of "serious" medical
9 impairment, the Guidelines suggest home detention may be an appropriate
10 sentence. *Id.* Furthermore, a sentencing court may vary downward from the
11 guideline sentencing range for post-offense rehabilitation. *See, United States v.*
12 *Tzoc-Sierra*, 387 F.3d 978, 981-82 (9th Cir. 2004); *United States v. Chapman*, 356
13 F.3d 843, 847-88 (8th Cir. 2004); and *United States v. Hairston*, 502 F.3d 378,
14 383-84 (6th Cir. 2007).

15 Here, the combination of Mr. Terrell's serious medical condition, along with
16 his post-offense efforts to reach a life of sobriety justify a downward variance. Due
17 to his serious health condition, he is motivated to remain sober to get on the kidney
18 transplant list. This includes the fact the Mr. Terrell stopped smoking while in
19 treatment to accomplish that goal.

20 In addition, Mr. Terrell's family support adds further reasons to vary below
21 the guideline range. This support gives Mr. Terrell the incentive to succeed, after
22 many years of life-failures and incarceration due to his alcohol abuse.

23 3. Family support system.
24

1 Attached is a text message Mr. Terrell's mother, Renay Allen, asked to pass
 2 on to the Court for consideration. In addition, a non-scannable exhibit will be
 3 filed. This exhibit contains statements of support and hope for Mr. Terrell from
 4 family members. The audio/video recordings will be filed with the Clerk's Office
 5 and served on the government in a flash-drive.

6 The family members in the audio/video recordings and length of recordings
 7 are as follows:

- 8 a. Aunt Donnie - 2 minutes, 45 seconds.
- 9 b. Mother, Renay Allen - 2 minutes 40 seconds.
- 10 c. Aunt April - 1 minute 25 seconds
- 11 d. Uncle Eric, 7 minutes, 17 seconds.

12 The family statements establish tremendous family support. They establish
 13 the family's recognition that Mr. Terrell can be successful if he maintains a life or
 14 sobriety and they are ready to help him. In regards to a defendant's family support
 15 system, the Sixth Circuit previously stated:

16 the district court's references to Stall's family and friends
 17 is not reversible error because the district court
 18 considered not the mere existence of family support, but
 19 the fact that Stall's family and friends had "promised to
 20 aid in his rehabilitation." While family ties of a defendant
 21 are not "ordinarily relevant," U.S.S.G. § 5H1.6, they may
 22 be relevant insofar as they bear some connection to
 23 permissible considerations. With respect to Stall, the
 24 district court believed Stall's "strong social support" was
 one reason to think that therapy would be effective, that a
 lengthy term of supervised release could adequately
 protect the public, and that a longer term of incarceration
 was unnecessary to vindicate the statutory sentencing
 factors. In this context, we cannot say this consideration
 was impermissible or that the district court abused its
 discretion.

1 *United States v. Stall*, 581 F.3d 276, 289 (6th Cir. 2009)

2 Although Mr. Terrell has a past that is fraught with past criminal activity,
3 and involving violence, his family describes him as a kind hearted person when he
4 is sober. His family's support in this regard is meaningful and may be considered
5 by this Court when fashioning the appropriate sentence to be imposed. *Id.*

6 D. **18 U.S.C. § 3553(a).**

7 The nature of the offense is serious and Mr. Terrell understood that when he
8 admitted to the police that he "messed up." (ECF No. 37 at 5, ¶ 13). However, the
9 offense conduct is mitigated to some degree in view of the underlying conduct.
10 Mr. Terrell is not eligible under the Guidelines for an offense reduction for
11 possessing the Glock pistol for lawful sporting purposes due to his past conviction
12 for a crime of violence. *See*, U.S.S.G. § 2K2.1(b)(2). His conduct, however, fits
13 squarely within the conduct that permits the lawful sporting purpose reduction, but
14 for, the prior conviction. A previously convicted felon who demonstrates that
15 possession of a firearm was strictly for lawful purposes, vastly diminishes the
16 chances that such firearm may be used in a violent manner.

17 In this case, Mr. Terrell's possession was momentary. The pistol he shot did
18 not belong to him. After further reflection, Mr. Terrell cancelled the sale of the
19 other pistol he had on layaway from the shooting range. Under these
20 circumstances, a downward variance is justified.

21 While growing up, Mr. Terrell witnessed violence by his father towards his
22 mother. He reported that his father beat him and his sister with 2x4s, hangers and
23 with his fist.
24

1 Mr. Terrell's background includes a lengthy and recent criminal history,
2 including acts of violence. The information provided by his family and in his
3 history connect this criminal background to a serious drinking problem. (ECF No.
4 37 at 21, ¶ 164).

5 Last year, Mr. Terrell took the efforts to maintain a life of sobriety. He
6 successfully completed inpatient treatment. He was living in a sober home and
7 participating in outpatient treatment just before his arrest. His mother reported that
8 Mr. Terrell "was sober, had started going to church, and was on the right path at the
9 time of his arrest for the instant offense." *Id.*

10 The sentence that is recommended below will adequately promote respect for
11 the law. Again, Mr. Terrell demonstrated his respect for the law by admitting the
12 wrongfulness of his conduct. The recommended sentence will provide adequate
13 deterrence and respect for the law, considering the fact that Mr. Terrell possessed
14 the Glock 20 for a brief period and for lawful sporting purposes.

15 **D. Recommendation.**

16 Based on the foregoing, it is recommended that the Court imposed a sentence
17 of imprisonment below the advisory guideline sentencing range of 51 to 63 months.
18 It is recommended that the Court impose a sentence of imprisonment of 24 months
19 in prison, or in any event, no longer than 36 months in prison.

20 It is recommended that the Court impose no fine and a \$100.00 penalty
21 assessment. It is recommended that the Court impose a 3-year term of supervised
22 release.
23
24

1 Dated this 6th day of June, 2023.

2 Respectfully Submitted,

3
4 *s/ Stephen R. Hormel*

WSBA # 18733

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9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on June 6, 2023, I electronically served the foregoing
12 under seal Sentencing Memorandum, to the following: Michael Vander Giessen,
13 Assistant United States Attorney, and Jennifer Frieling, United States Probation
14 Officer.

15 *s/ Stephen R. Hormel*

WSBA # 18733

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